MEETING OF THE STATES PARTIES TO THE CONVENTION ON THE PROHIBITION OF THE USE, STOCKPILING, PRODUCTION AND TRANSFER OF ANTI-PERSONNEL MINES AND ON THEIR DESTRUCTION

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INFORMATION KIT ON THE DEVELOPMENT OF NATIONAL LEGISLATION TO IMPLEMENT THE CONVENTION ON THE PROHIBITION OF ANTI-PERSONNEL MINES*

* Prepared by the International Committee of the Red Cross with the support of the International Campaign to Ban Landmines and the Government of Belgium.

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1. INTRODUCTION

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction (hereinafter referred to as "the Convention") provides a comprehensive framework for ending the suffering caused by these weapons. At its core are obligations intended to eliminate anti-personnel (AP) mines and bring relief to mine victims and mine-affected communities.

Each State party to the Convention must:

- never under any circumstances use, develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, AP mines or assist, encourage or induce anyone to do so (Article 1);

- destroy or ensure the destruction of all stockpiled AP mines it owns or possesses, or that are under its jurisdiction or control, within four years of the entry into force of the Convention for that State (Articles 1 and 4);

- destroy or ensure the destruction of all AP mines in mined areas under its jurisdiction or control within 10 years of the entry into force of the Convention for that State, and, pending this destruction, mark and monitor all known or suspected mined areas (Article 5);

- if in a position to do so, provide assistance for the destruction of stockpiled AP mines, clearance of mined areas, mine-awareness programmes, and the care and rehabilitation, and social and economic reintegration, of mine victims (Article 6);

- report to the Secretary-General of the United Nations no later than 180 days after the entry into force of the Convention for that State, and then annually by 30 April of each year (Article 7);

- provide access to, and facilitate the work of, fact-finding missions authorized pursuant to Article 8;

- impose penal sanctions to prevent and suppress any activity prohibited under the Convention undertaken by persons or on territory under its jurisdiction or control (Article 9).

In order to fulfil their obligations under the Convention, State Parties must adopt a range of measures — legislative, administrative and other — to give effect to the Convention. The key provision regarding legislative implementation of the Convention is Article 9, which provides as follows:

> *"Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control."*

The purpose of this Information Kit is to assist States in developing legislation to implement the Convention; it identifies the elements to be considered when preparing such laws.

A number of States from both civil and common law traditions have enacted legislation to meet their obligations under the Convention. This may be accomplished through the adoption of "stand-alone" legislation or through amendments to existing provisions in national law. The Information Kit focuses on "stand-alone" legislation; the laws adopted by France, Mali, New Zealand, Spain, Trinidad and Tobago, and the United Kingdom (in the original languages) are annexed to this Information Kit as examples.

2. ELEMENTS TO CONSIDER WHEN PREPARING IMPLEMENTING LEGISLATION

Implementing legislation must impose penal sanctions (section 2.1). It may also contain provisions relating to definitions (section 2.2), components of AP mines (section 2.3), destruction and clearance (section 2.4), reporting (section 2.5), and fact-finding missions (section 2.6).

2.1 Individual criminal responsibility for activities prohibited by the Convention

2.1.1 Introduction

Article 9 of the Convention requires States Parties to impose penal sanctions to prevent and suppress any activity prohibited under the Convention undertaken by persons or on territory under its jurisdiction or control. Under Article 1 of the Convention, it is prohibited to States Parties to use, develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, AP mines. It is also prohibited to assist, encourage or induce, in any way, anyone to engage in any prohibited activity.

States Parties must ensure that their implementing legislation:

- imposes **individual criminal responsibility** for activities prohibited by the Convention (see section 2.1.2);
- permits **exceptions** to criminal liability as provided for in Article 3 of the Convention, if necessary (see section 2.1.3);
- imposes **penal sanctions** proportionate to the seriousness of the offence (see section 2.1.4);
- provides for **jurisdiction** over prohibited activities undertaken **by persons** or **on territory** under its jurisdiction or control (see section 2.1.5).

2.1.2 Individual criminal responsibility

Implementing legislation must impose individual criminal responsibility for all activities prohibited by the Convention under Article 1, including assisting, encouraging or inducing anyone to engage in these activities.

In addition, the implementing legislation of certain States contains specific provisions dealing with the liability of bodies corporate.

2.1.3 Exceptions

Article 3(1) of the Convention permits retention or transfer of a number of AP mines for the development of and training in mine detection, mine clearance, or mine destruction techniques. The number of AP mines retained or transferred shall not exceed the minimum number absolutely necessary for these purposes. Under Article 3(2), the transfer of AP mines for the purpose of destruction is also permitted.

States Parties may need to allow for these exceptions in their implementing legislation. Some States stipulate the maximum number of AP mines which may be retained or transferred for the development of and training in mine detection, mine clearance, or mine destruction techniques.

2.1.4 Penalties

Article 9 of the Convention requires States Parties to impose penal sanctions for activities prohibited under the Convention, without specifying the penalties which should apply.

States Parties should ensure that their implementing legislation provides for penal sanctions proportionate to the nature and seriousness of the offence and appropriate to the regime of penalties applicable to other offences. Implementing legislation generally provides that offenders are liable to a term of imprisonment and/or a fine.

States Parties may also wish to include a provision in their implementing legislation allowing seizure or forfeiture of AP mines or other prohibited objects (essentially, components of AP mines, see section 2.3) involved in the commission of an offence.

2.1.5 Jurisdiction

Article 9 of the Convention requires States Parties to impose penal sanctions for activities prohibited under the Convention undertaken by persons or on territory under its jurisdiction or control.

States Parties should ensure that their implementing legislation provides for jurisdiction over offences committed within the territory of the State, or other territory it controls, as well as acts undertaken by the State's nationals outside its territory.

2.2 Definitions

States Parties must ensure that their implementing legislation contains definitions consistent with those established by Article 2 of the Convention.

Article 2 of the Convention defines the terms "anti-personnel mine", "mine", "anti-handling device", "transfer" and "mined area". Implementing legislation should include definitions of each of these terms, or a reference to the definitions contained in the Convention. If definitions are included in the legislation, they should be consistent with the wording in the Convention. This will prevent discrepancies between the Convention and national law and prevent undesirable loopholes.

In addition to the definitions contained in the Convention, a number of common law States have included, in their implementing legislation, definitions of terms such as "component", "Convention", "fact-finding mission", "premises", and "prohibited object".

2.3 Components of AP mines

Article 1 of the Convention prohibits the use, development, production, acquisition, stockpiling, retention or transfer of AP mines. The prohibition extends to persons who assist, encourage or induce others to engage in prohibited activities.

Although the Convention does not explicitly refer to components of AP mines, a number of States have classified components designed or adapted to form part of an AP mine as "prohibited objects", making possession, acquisition, or transfer of these an offence.

2.4 Destruction of stockpiles and clearance of mined areas

Under Articles 4 and 5 of the Convention, each State Party is required to destroy or ensure the destruction of:

- all stockpiled AP mines it owns or possesses, or that are under its jurisdiction or control, as soon as possible but no later than four years after the entry into force of the Convention for that State;

- all AP mines in mined areas under its jurisdiction or control, as soon as possible but no later than 10 years after the entry into force of the Convention for that State.

A number of States have included in their implementing legislation provisions to facilitate destruction and clearance of AP mines. These grant power to enter and search premises, and permit collection and transfer of AP mines for destruction. For States that have AP mines stockpiled or in mined areas under their jurisdiction or control, provisions such as these may be useful to facilitate destruction and clearance programmes.

The implementing legislation of some States contains a provision establishing a specific date for completion of stockpile destruction. Such provisions may be a useful way to ensure that the deadline in the Convention is met.

A provision may need to be included to require the marking, monitoring and protection of known or suspected mined areas under the State's jurisdiction or control, by fencing or other means, to ensure the effective exclusion of civilians, until clearance is completed.

2.5 Annual reports

Article 7 of the Convention requires States Parties to file reports with the Secretary-General of the United Nations. An initial report must be filed no later than 180 days after the entry into force of the Convention for that State. The information contained in the initial report must be updated annually to cover the last calendar year and be submitted no later than 30 April of each year.

These reports must provide information on a variety of matters, including the national implementation measures adopted pursuant to Article 9, the total number of all stockpiled AP mines, the location of all mined areas, the number of mines retained under Article 3, the status of destruction programmes, and measures taken to warn civilians in relation to all mined areas. States Parties may also report voluntarily on other relevant matters not covered by the formal reporting requirements under Article 7 such as the assistance provided for the care and rehabilitation, and social and economic reintegration, of mine victims.

States Parties should consider whether implementing legislation should confer information-gathering powers on the minister responsible for filing these reports and require disclosure of information on AP mines. States may need to review national laws to ensure that they do not impede access to, and full disclosure of, information required to fulfil the Article 7 reporting obligation.

The Meeting of States Parties to the Convention has adopted a reporting format to be used by States in the preparation of these reports. This format can be obtained from the Department of Disarmament Affairs, United Nations, S-3100, New York, NY 10017 (by e-mail at malinova@un.org) or at the following Website: www.un.org/depts/dda.

2.6 Fact-finding missions

Article 8 of the Convention establishes a clarification procedure which may be used if a State Party has concerns about compliance by another. The measures range from requests for clarification to fact-finding missions.

Each State Party must ensure that it is in a position to cooperate with a fact-finding mission carrying out activities on its territory or on territory under its control, in accordance with Article 8 of the Convention. This may require the adoption of legal, regulatory and administrative measures to:

- ensure that members of the fact-finding mission enjoy the privileges and immunities specified under the Convention (Article 8(10));
- receive, transport and accommodate the fact-finding mission and ensure its security to the maximum extent possible (Article 8(11));

- allow the fact-finding mission to bring equipment necessary to gather information on the alleged compliance issue into the State's territory (Article 8(12));

- enable the fact-finding mission to speak with those who might be able to provide relevant information (Article 8(13));

- grant the fact-finding mission access to all areas and installations under the State's control (Article 8(14)).

The implementing legislation of most States contains provisions dealing with some or all of these issues. States may also wish to consider whether the legislation should provide penalties for obstructing or deceiving any member of a fact-finding mission exercising his or her functions or powers under the Convention.

3. EXAMPLES OF IMPLEMENTING LEGISLATION

A list of the States that are known to have enacted implementing legislation is given in Annex 1. Examples of implementing legislation adopted by certain States — France, Mali, New Zealand, Spain, Trinidad and Tobago and the United Kingdom— are given (in the original languages) in Annex 2. These were selected to provide a variety of laws from civil and common law States, in several languages. Additional examples of legislation may be found at the following Website: www.icrc.org/ihl-nat.

It should be stressed that it is the responsibility of each State Party to ensure that it has fully implemented its obligations under the Convention, in accordance with its legal system, constitution and other legislative provisions. The selection of implementing legislation annexed to this Information Kit does not represent an endorsement of the approaches followed as the most suitable means to implement the Convention, or an evaluation of the adequacy of the legislation in giving effect to the obligations under the Convention.

It should also be recalled that there are other obligations under the Convention that may require implementation through administrative action or practical measures. These include the clearing of mined land, the provision of medical and rehabilitative care for mine victims and the furnishing of assistance to mine-affected countries. Also relevant are the need to review export licences, the notification of companies involved in the production and sale of AP mines and the revision of military doctrine.

The International Committee of the Red Cross (ICRC), through its Advisory Service on International Humanitarian Law, is available to provide advice and documentation to governments on national implementation of international humanitarian law; it can be contacted through the nearest ICRC delegation or at the address given below.

International Committee of the Red Cross
19, Avenue de la Paix
1207 Geneva, Switzerland

http://www.icrc.org

May 2001

Annex 1

List of States with National Legislation

(as at 1 May 2001)

Below is a list of States that are known to have enacted legislation to implement the Convention. Additional information on legislative measures taken by other States would be welcomed.

Australia

Austria

Belgium

Cambodia

Canada

Czech Republic

France

Germany

Guatemala

Honduras

Hungary

Italy

Japan

Malaysia

Mali

New Zealand

Nicaragua

Norway

Spain

Sweden

Switzerland

Trinidad and Tobago

United Kingdom

Zimbabwe